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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.402/2002

DB: Hon'ble L.C. Bhadoo,
Hon'ble Sunil Kumar Sinha, J, J

Appellant	Dhani Ram, s/o Mangalu Muria, aged 26 years, r/o village Karsing, P.S. Kondagaon, Distt. Bastar (C.G)
	Vs.
RESPONDENT	State of Chhattisgarh through P.S. Kondagaon, Distt. Bastar (C.G)

Appeal under Section 374(2) of the Code of Criminal Procedure

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Appearance:

Shri Subhash Yadav, counsel for the appellants.

Shri Ashish Shukla, Addl. Public Prosecutor, for the State.

ORAL JUDGMENT
(13.9.2007)

The following judgment of the Court was delivered by

L.C. Bhadoo, J,

(1) This appeal is directed against the judgment of conviction and order of sentence dated 11.2.2002 passed by the First Addl. Sessions Judge, Jagdalpur, in Sessions Trial No.243/2001 whereby the learned Addl. Sessions Judge after holding the accused appellant guilty for commission of the offence u/s 302 I.P.C. for committing the murder of his wife namely Chandra Kiran sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for six months. However, the learned Addl. Sessions Judge, has acquitted the co-accused Maniram.

(2) The case of the prosecution, in brief, is that accused Dhani Ram gave merg intimation Ex.P.19, on the basis of which, the First Information Report Ex.P.18 was registered, in which he mentioned that yesterday on 18.11.2000 at about 12.00 – 1.00 p.m., Chandra

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Kiran went to Kondagaon by Bus and he followed the Bus on Motorcycle, from Kondagaon Chandra Kiran changed the bus for going to his village. He followed that bus also on Motorcycle. At about 8 – 9 p.m. in the night after taking dinner, he went for sleep with his wife Chandra Kiran. At about 2.30 - 3 a.m. on 19.11.2000, somebody knocked the door of his house and asked him to open the door, on which he opened the door and came out. Then one person caught him and pressed his mouth. Thereafter 2-3 persons took him at a distance of 10-15 paces and said that he should not raise any cry otherwise they will murder him. He saw that Naxalites of Dalam namely Ram Dev, Rajman, Jai Singh, Narsingh and another 10-11 persons alongwith 4 ladies were there and they said that his wife has informed the police about their activities, based on information given by his wife, the police has seized their articles worth lakhs of Rupees, therefore, today they will not leave her and commit her murder. Thereafter, Ramdev alongwith 14-15 Naxalites wearing green dresses, armed with guns and sharp edged weapons committed murder of his wife and thereafter they ran towards forest. He informed his elder brother Maniram, Shyamnath & Shiv Ram who came and saw that his wife was already dead and injuries were present on her neck caused by sharp edged weapons. The body of Chandra Kiran was lying in the house. Based on this report, after registering the First Information report, the investigating officer, left for the scene of occurrence. One electric wire was seized from the house of Maniram under Ex.P.2, one 3 Pin-Plug and broken pieces of electric bulb were seized under Ex.P.4. The plain Soil and blood stained soil was seized under Ex.P.5 from the place of occurrence. The site plan was prepared by Halka Patwari. The body of Chandra Kiran was sent for post mortem examination to Government Hospital, Kondagaon, where Dr.S. Lonhare (P.W.6) conducted postmortem on the body of Chandra Kiran and prepared the postmortem report (Ex.P.11), he opined that the cause of death was excessive hemorrhage due to several incised wounds and the death was homicidal in nature. While in the police custody, accused Maniram gave memorandum (Ex.P.13) and in pursuance of that,

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an Axe was seized under Ex.P.15. Accused Dhani Ram gave memorandum (Ex.P.17) and in pursuance of that one knife was seized under Ex.P.14. The site plan Ex.P.20 was prepared by the I.O. After completion of the investigation, charge sheet was filed. The seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur, from where the report was received and as per the said report blood was found on the Axe and knife. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Kondagaon, who in turn committed the case to Sessions Judge, Jagdalpur, from where the First Addl. Sessions Judge, received the case on transfer for trial.

(3) The prosecution in order to establish the charge against the accused persons, examined 11 witnesses. The statement of the accused persons were recorded u/s 313 Cr.P.C. in which they denied the material appearing against them in the prosecution evidence, pleaded that they are innocent and they have been falsely implicated in the crime. The accused persons examined D.W.1 Bhagat Ram, D.W.2 Sayatu Ram and D.W.3 Shyamnath in their defence.

(4) The learned Addl. Sessions Judge, after hearing counsel for the respective parties convicted and sentenced the accused appellant Dhani Ram as aforementioned. However, the learned Addl. Sessions Judge, acquitted the co-accused Maniram from all the charges.

(5) We have heard Mr.Subhash Yadav, counsel for the appellant and Shri Ashish Shukla, Addl. Public Prosecutor for the State.

(6) Mr.Subhash Yadav, counsel for the appellant has not disputed the homicidal death of Chandra Kiran. Moreover, Dr. S. Lonhare (P.W.6) has stated that he conducted the postmortem on the body of deceased and there were 10 incised wounds on the head and neck portions. The rigor mortis was present and the injuries were inflicted by sharp edged weapon. The death was homicidal in nature, cause of death was hemorrhage as a result of

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incised wounds on the neck. His report is Ex.P.11. The injuries were caused by the Axe in question. He inspected the Axe. His report is Ex.P.2. In view of the medical evidence, it is established that the death of Chandra Kiran was homicidal in nature.

(7) As far as the involvement of the accused in crime in question is concerned, except P.W.10 Kiran Netam, all the witnesses have turned hostile and they have not supported the prosecution case, but the fact remains that from the evidence of Sarpanch Dhan Singh (P.W.1) it is apparent that in the fateful night, Chandra Kiran was at the residence of accused Dhani Ram in village Karsing. He has stated that Dhani Ram, Maniram, Shyamnath came and informed that Naxalites have come and attacked Chandrakiran. He has further stated that Dhani Ram asked him that if any person enquires from him, then he should tell that Naxalites have committed the murder of Chandra Kiran. P.W.4 Harendra Kumar, who is the nephew of the accused, son of Shyamnath has also stated that accused Dhani Ram informed him that Chandra Kiran has been murdered by Dada People who live in the forest. Therefore, from the above evidence, it is established that murder of Chandra Kiran was committed in the house of Dhani Ram at village Karsing in the intervening night of 18 & 19th of Nov. 2000.

(8) P.W.10 Kiran Netam has stated that in the year 1999 she was studying in IXth class, accused Dhani Ram is the husband of Chandra Kiran, the sister of Chandra Kiran namely Sangeeta is also known to her and she was treating Chandra Kiran as her sister. Sangeeta also used to reside with Chandra Kiran because Chandra Kiran was pregnant; therefore, she was unable to work. When they were at the village Karsing, Chandra Kiran disclosed her that Dhani Ram has illicit relations with Sangeeta, Chandra Kiran had died in the village of Karsing. Chandra Kiran has one daughter namely Sushmita. On the date of incident, she along with Chandra Kiran and her daughter left for village Karsing, they reached Kondagaon at 2.30 p.m., where they had stayed for

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sometime. In Kondagaon, they had changed bus for going to village Karsing. Dhani Ram came to Karsing on a Motorcycle. They left Kondagaon at about 4 p.m. for Karsing, accused Dhani Ram met them on the way. The accused first took them to his residence from where he took them to the house of Shyamlal, thereafter they returned to their house. After taking dinner, they went to sleep, in the night the accused called Chandra Kiran but she refused to go to his room, then she enquired from her sister as to why she is not going, then Chandra Kiran disclosed her that Dhani Ram has developed illicit relations with Sangeeta, therefore, she will not go to his room. Chandra Kiran did not go to the room of accused. She has further stated that Chandra Kiran asked for a mat, and she after spreading the mat on the ground slept there. The wife of Maniram is also known to her because she invited Chandra Kiran for meal, when she came Chandra Kiran did not woke up, therefore, wife of Mani Ram sprinkled water on her face, Chandra Kiran woke up and took her meal. Thereafter she again went for sleep. She was also sleeping in the same room where Chandra Kiran was sleeping. In the mid-night, the accused came there and asked her to go to another room, on which she stated that she will not go to that room, at that time Chandra Kiran also woke up and said that what is happening, on which she informed Chandra Kiran that the accused is not allowing her to sleep near the fire. He is insisting that she should go to another room, on which Chandra Kiran asked the accused to allow her to sleep here only, on this Dhani Ram started threatening and asked her to go to another room for sleep, at that time she asked time from accused on which he said that it was 2 a.m. Thereafter, she went to the room where she was asked to go. The accused after closing the door bolted from outside. After half an hour, she heard the sound of foot movement and thereafter she heard the sound of knocking of the door. She became frightened and went for sleep after covering the body with the blanket, she heard the cries of Chandra Kiran and after some time, the sister in law of Chandra Kiran came and opened the door, which was bolted from out side. She asked her see what has happened and said that 10 – 15 people came and

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they have left. She again went for sleep. The body of Chandra Kiran was drenched with blood, there were injuries on the body of her sister, these injuries were caused by Pharsa or Kulhadi. She heard the sound of foot movement of one person only and not the sound of foot of 10-15 persons. She was declared hostile at the request of A.G.P. and on cross examination by A.G.P., she stated in para 9 that when she approached Chandra Kiran, she was alive. She enquired from Chandra Kiran and Chandra Kiran replied that accused Dhani Ram has attacked her with Axe, she was saying that her daughter would become an orphan. Chandra Kiran also asked her to go and tell in the police Station Kanker that Dhaniram has committed her murder with an Axe.

(9) Learned counsel for the appellant argued that in police statement Ex.D-1 this witness has stated that on 18.11.2000 she returned from Kondagaon to Kanker, therefore, there is no question of her presence in the village Karsing. In order to appreciate the argument advanced by Mr. Yadav, we have perused the police case diary statement Ex.D-1. It is correct that it has been mentioned in the said statement that about 5 – 5.30 p.m., she left Kondagaon for Kanker for going to the residence of Dhani Ram. If this whole statement is read then it becomes clear that the word Kanker has been written inadvertently because just after that she has stated because Chandrakiran became weak therefore she took her alongwith her. She has further stated that 10 – 11 p.m., in the night after taking mea,l Dhani Ram called Chandra Kiran to sleep in his room, Chandra Kiran said that Sangeeta will sleep with him on which she enquired from Chandra Kiran that why she is saying so to Dhani Ram then she replied to her that she caught the accused Dhani Ram when he was sleeping with Sangeeta and at that time she slapped Sangeeta. Therefore, this portion shows that this witness was very much present in village Karsing at the residence of Dhani Ram in the fateful night. Moreover, the investigating Officer, S.P. Patel (P.W.11) in para 14 of his cross examination, has categorically stated that in Ex.D-1, the word Kanker has been inadvertently written by him, in fact, this witness

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has stated village Karsing. Therefore, we do not find any substance in the argument of Mr.Yadav that this witness was not in village Karsing.

(10) Now coming to the reliability and admissibility of the evidence of this witness is concerned, it is settled law that the oral dying declaration is also admissible in evidence, but the court is required to satisfy that the dying declaration was voluntary, true and proved to be made to the witness. In order to test the veracity of the evidence of this witness, as has been discussed earlier, this witness has categorically stated that since last one year or so, she was residing with deceased Chandra Kiran as she was weak, therefore, the deceased requested her to accompany her to the village of accused i.e., Karsing, on the request, she accompanied Chandra Kiran. She has categorically stated that when they reached to the village of accused Dhaniram, he took them to the house of Shyamnath, from there they returned to the house of Dhani Ram, they took their meal and went for sleep. Even she has stated that the wife of accused Maniram, brother of accused appellant, also came in the night and opened the door of her room and said to her that 10 – 15 persons came and they have committed murder. Therefore, her presence in the house is established and she has also stated that she had heard the cries of Chandra Kiran on which she went to Chandra Kiran, at that time she was alive, Chandra Kiran disclosed her that accused Dhani Ram has attacked her. In the cross examination of this witness, the defence has not been able to bring on record any circumstance which may discredit her evidence as to why she will depose against the accused in order to implicate him in a false case, that too, in the murder of his own wife. She has also stated that Chandra Kiran was not happy with accused Dhaniram, as once she saw Dhaniram when he was sleeping with her sister Sangeeta in compromising position and at that time, Chandra Kiran slapped Sangeeta, that is why, even on the request of accused on the fateful night Chandra Kiran refused to sleep in his room. This witness has not been cross examined by defence regarding oral

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dying declaration made by Chandra Kiran to her. Therefore, we find that the deceased Chandra Kiran made dying declaration to P.W.10, Kiran Netam, which inspires confidence of the Court.

(11) Now coming to the defence raised by the accused that as before Chandra Kiran was appointed as Constable in the Police Department, she was a Naxalite, therefore, the Naxalite people were after her, that is why they came in the fateful night and committed the murder of Chandra Kiran and the merg intimation as also the F.I.R., was given by Dhani Ram to that effect. But from the evidence on record, the accused has not been able to establish the defence for the foregoing reasons. Had 10 – 15 Naxalites came over and attacked Chandra Kiran then Kiran Netam (P.W.10) who was sleeping in the same house would have noticed regarding the entry of 10 – 15 persons in the house and committing the murder of deceased. She has categorically stated that after half an hour, when she went to sleep in another room on asking by accused Dhani Ram, she heard the sound of foot movements of one person, not of 10 -1 5 persons and thereafter, heard the cries of Chanda Kiran, the wife of Mani Ram came there and opened the door and they immediately approached Chandrika and then she disclosed to her that accused Dhani Ram has attacked her with Axe. Apart from that, even though the accused Dhani Ram had lodged report in Police Station to the effect that Naxalites had committed murder of Chandra Kiran but in his statement u/s 313 Cr.P.C., he has not stated that the murder was committed by the Naxalites. Even the co-accused Maniram has also not stated in his statement u/s 313 Cr.P.C., that the murder of Chandra Kiran was committed by Naxalites. Even the evidence of D.W.1 Bhagat Ram is of no relevance who has simply stated that Naxalites committed murder of Kotwar Surit Das. Similarly D.W.2 has simply stated that he went alongwith accused to lodge the report in the police station. D.W.3 Shyam Nath is brother of the accused. He has simply stated that Chandra Kiran was murdered, a report was lodged in the Police station and Police came to the village for investigation and he has stated that the name of earlier

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husband Chandrika was Anil. The name of father of Anil is Peelsai Sori, who was murdered by Naxalites, therefore, these defence witnesses have not been able to establish that the incident was committed by the Naxalites.

(12) For the foregoing reasons, we are of the considered opinion that there is no illegality and infirmity in the judgment of the trial Court. The conviction and sentence imposed against the appellant are confirmed.

(13) The appeal being devoid of merit, the same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Rao